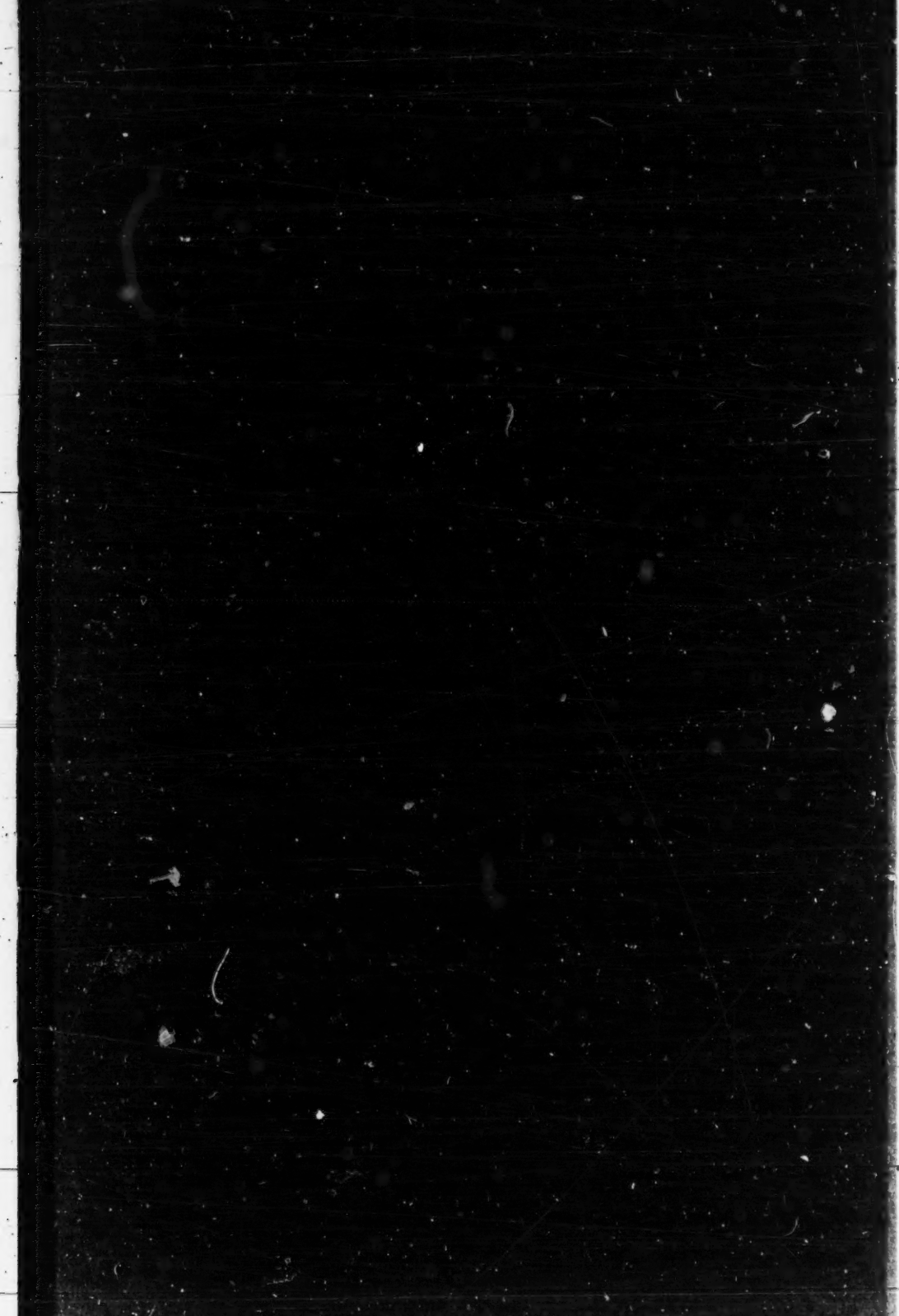

INDEX

CITATIONS

563433—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 463

LEE ARENAS, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The district court wrote no opinion. The opinion of the circuit court of appeals (R. 74–75) is reported in 137 F. 2d 199.

JURISDICTION

The judgment of the circuit court of appeals sought to be reviewed was entered June 30, 1943 (R. 76–77). Petition for rehearing was denied August 4, 1943 (R. 77). The petition for a writ of certiorari was filed October 29, 1943. The jurisdiction of this Court is invoked under section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the applicable legislation, a selection for allotment made on the Mission Indian reservation at Agua Caliente or Palm Springs, California, created an equitable right to receive a trust patent for an allotment of land on that reservation, when the selection was never approved by the Secretary of the Interior.

STATUTES INVOLVED

The pertinent parts of the Act of January 12, 1891, 26 Stat. 712, are as follows:

> SEC. 4. That whenever any of the Indians residing upon any reservation patented under the provisions of this act shall, in the opinion of the Secretary of the Interior, be so advanced in civilization as to be capable of owning and managing land in severalty, the Secretary of the Interior may cause allotments to be made to such Indians, out of the land of such reservation, in quantity as follows: To each head of a family not more than six hundred and forty acres nor less than one hundred and sixty acres of pasture or grazing land, and in addition thereto not exceeding twenty acres, as he shall deem for the best interest of the allottee, of arable land in some suitable locality; to each single person over twenty-one years of age not less

than eighty nor more than six hundred and forty acres of pasture or grazing land and not exceeding ten acres of such arable land.

SEC. 5. That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees, which shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs according to the laws of the State of California, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. * * *

The pertinent part of the Act of March 2, 1917, 39 Stat. 969, 976, is as follows:

* * * *Provided,* That the Secretary of the Interior be, and he is hereby, authorized and directed to cause allotments to be made to the Indians belonging to and having tribal rights on the Mission Indian reservations in the State of California, in areas as provided in section seventeen of the Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at

Large, page eight hundred and fifty-nine),[1] instead of as provided in section four of the Act of January twelfth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and thirteen) * * *.

STATEMENT

On October 27, 1941, petitioner filed a second amended complaint in which he alleged that on or about June 7, 1921, the Secretary of the Interior determined that the Agua Caliente or Palm Springs Band of Mission Indians of California, of which petitioner was a member, were so far advanced in civilization and had so far adopted the life, habit, and ways of civilized life as to be capable of owning and managing land in severalty, and had appointed a Special Allotting Agent to make allotments of land on that reservation to the members of that band of Indians; that on or about June 23, 1923, petitioner made his allotment selections and received from the Special Allotting Agent a certificate of selection for allotment, which was stamped "Not valid unless approved by the Secretary of the Interior"; that on or about October 26, 1923,

[1] Section 17 of the 1910 Act modified the Act of February 28, 1891, 26 Stat. 794, amending the General Allotment Act of February 8, 1887, 24 Stat. 388, to authorize the Secretary of the Interior to make allotments to certain Indians "in such areas as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian."

the Special Alloting Agent, after inquiry of officials of the Indian Office at Washington, D. C., advised petitioner that he might take possession of the lands selected and make improvements thereon and encouraged him in this; that the Special Allotting Agent advised petitioner that the certificate of selection for allotment would be evidence of his vested right to hold, possess, and improve the lands pending issuance of a trust patent; that the Commissioner of Indian Affairs and the Secretary of the Interior represented to petitioner that a trust patent would issue; that in reliance upon these acts and representations on the part of the Special Allotting Agent, the Commissioner of Indian Affairs, and the Secretary of the Interior petitioner entered upon, cultivated, and substantially improved the lands; and that by reason of such acts and representations the United States was estopped to deny or question petitioner's right, title, or interest in the lands (R. 2–17). Petitioner prayed for a judgment holding him to be entitled to a trust patent for the lands selected and directing that a copy of the judgment be certified to the Secretary of the Interior (R. 47–48).[2]

[2] The prayer sought the relief authorized in proper cases by the Jurisdictional Act of August 15, 1894, 28 Stat. 286, 305, 25 U. S. C., sec. 345, as amended, which states that upon a determination that an Indian is entitled to an allotment of land, "the judgment or decree * * * shall have the same effect, when properly certified to the Secretary of the In-

On November 29, 1941, respondent filed a motion for summary judgment (R. 48–50). Attached to the motion was an affidavit by Carl Spinner, Principal Clerk of the Mission Indian Agency, in which it was stated that examination of the records of that Indian Agency showed that the Secretary had never approved any selections for allotment on the Agua Caliente or Palm Springs Indian reservation but had disapproved them (R. 50–51). Also attached to the motion was a certificate by E. J. Armstrong, Acting Commissioner of Indian Affairs, in which it was certified that no selections for allotment on that reservation had ever been approved by the Secretary of the Interior (R. 52). In support of the motion, respondent alleged that the subject matter and purpose of the second amended complaint were the same as those of the complaint in the case of *St. Marie* v. *United States,* 108 F. 2d 876, which the court had previously decided in favor of the respondent,[3] and that the only new matter

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terior, as if such allotment had been allowed and approved by him * * *."

[3] In the *St. Marie* case it appeared that a schedule of allotment selections showing selections for fifty members of the Agua Caliente or Palm Springs Band of Indians, to whom certificates had been issued, had been prepared in 1923, but that, because many of the selections shown thereon were not voluntary, a new schedule listing allotment selections voluntarily made by twenty-four members, to whom certificates were issued, was prepared in 1927. Eighteen actions for trust patents were filed with respect to selections appearing on these schedules. The district court held that the Indians

in the second amended complaint concerned an alleged estoppel, which raised no justiciable issues because the United States is not bound by the unauthorized statements and acts of its officers and agents (R. 53–54).

On January 26, 1942, judgment granting the motion was entered (R. 59–60). On June 30, 1943, the judgment was affirmed by the circuit court of appeals (R. 76–77).

ARGUMENT

1. Petitioner's basic contention is that, the Secretary of the Interior having determined petitioner to be so advanced in civilization as to be capable of owning and managing an allotment and having permitted petitioner to make a selection for allotment, petitioner is vested with an equitable right to an allotment and trust patent therefor, which cannot be withheld (Pet. 14–18). He supports this contention by reference to cases construing the General Allotment Act and other allotment acts, which hold that an allotment selection thereunder initiates a vested right which

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were not entitled to trust patents because the Secretary of the Interior had not determined that the several Indians were so far advanced in civilization as to be capable of owning and managing an allotment and had not approved their selections for allotment. 24 F. Supp. 237. The circuit court of appeals affirmed. 108 F. 2d 876. Certiorari was applied for and was denied on October 14, 1940, because the petition was filed out of time. 311 U. S. 652. Petitioner was not a party to any of these actions.

cannot be defeated by arbitrary action on the part of administrative officials. However, under the applicable Mission Indian legislation a determination as to petitioner's degree of civilization and the making of a selection for allotment, without more, do not create any vested right. Sections 4 and 5 of the Act of January 12, 1891, 26 Stat. 712, show that, as the court below held (R. 74) and as petitioner concedes (Pet. 8–9), approval by the Secretary of the Interior of the selection for allotment is also required. Petitioner further contends (Pet. 8–11) that the Act of March 2, 1917, 39 Stat. 969, 979, is a mandatory requirement that allotments shall be made and, in effect, eliminates the requirement of approval by the Secretary of the Interior. That Act, however, only changed the acreage that the Secretary of the Interior might allot. Moreover, even if it required the making of allotments, it would be necessary for petitioner to bring an appropriate action to compel the Secretary of the Interior to make allotments, which he has not yet made. *St. Marie* v. *United States*, 108 F. 2d 876, 881.

2. Petitioner also contends (Pet. 11–14) that acts and representations on the part of the Special Allotting Agent, the Commissioner of Indian Affairs, and the Secretary of the Interior estop the respondent from denying that petitioner has any vested right or that he is entitled to a trust patent. Plainly, however, any acts or representa-

tions on their part not consistent with the official action of the Secretary of the Interior in not approving petitioner's selection for allotment would be unauthorized and hence would not bind the United States. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409.

CONCLUSION

The decision below is correct and involves no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1943.

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